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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO.15 OF 2007
IN
PETITION NO.D.46/2005

Shantaram Hanumant Mengade — Applicant
versus
Girish Dattatray Temgire — Respondent

Mr.Shantaram H. Mengade in person.
Mr.R.M.Joshi for respondent.

CORAM : A.S.OKA, J.
DATE : 15th March 2007

PC :

1. I have heard the applicant appearing in person and the advocate for the respondent. The respondent is the son-in-law of the applicant. The dispute between the applicant and the respondent is as regards custody of minor child of respondent and the daughter of the petitioner. According to the case of the petitioner, his daughter i.e. respondent’s wife committed suicide on 11th December 2004. Admittedly, the custody of the minor son is with the petitioner. The respondent filed a petition for custody of the minor son in the Family Court, at Bandra, Mumbai. The prayer in this application is for

transfer of the said petition to the Family Court, Pune. The transfer is sought mainly on the following grounds :-

> "(11) That the Applicant is completing his age of 60 years on 2.7.07 and he is suffering from hypertension and bronchial asthma being treated by his Doctor Son up to December 2006.
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> (12) That Applicants son found blood pressure in the range of 105 to 165 (normal required range 80 to 140) and observed that with the slightest exertion breathing becomes difficult due to acute attacks of asthma. Therefore the applicant was referred to Dr.Prashant Kothari on 6.1.07 and he is under that doctor's treatment presently. Dr.Kothari has advised seriously not to do exerting jobs and to avoid long travelling. His Medical certificate is enclosed as Exhibit No.D.
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> (13) That the Applicant is residing in Nigdi-Pune and has to travel to Mumbai and return back on the same day standing in crowded, congested trains to attend the court frequently causing lot of physical and mental worries. According to doctor's opinion if exertions and long journeys not avoided there can be danger to the life of the applicant."

2. The applicant appearing in person assures the Court that in the event the petition is transferred to the Family Court, Pune, he will not seek unnecessary adjournments and will co-operate with the Family court for early disposal of the petition filed by the respondent.

3. The learned advocate appearing for the respondent has opposed the prayer made in this application. He has placed reliance on the averments made in the affidavit-in-reply of the respondent. He submitted that the grounds which are made out in the application for transfer are nothing but by way of an afterthought. He invited my attention to the order dated 4th January 2007 passed by the learned Judge of the Family Court at Mumbai. He pointed out that even the learned Judge of the Family Court has taken a note of the conduct of the applicant and the said fact is reflected in the said order. He submitted that because of the observations made in the said order that the present application has been moved by the applicant.

4. I have considered the rival submissions. There is already an order passed by the Family Court at Mumbai granting access to the respondent to meet the minor child on every 1st, third and fifth Saturdays of every month. For the purposes of taking the child, the respondent who is a resident of Mumbai is required to visit the residence of applicant at Pune. The transfer is sought on the ground of convenience of the

petitioner himself as well as the convenience of the minor child. It is stated that the present age of the applicant is 60 years and recently he has been suffering from hypertension. It is contended that it will be very difficult for the applicant to travel from Pune to Mumbai by congested trains.

5. Since the dispute is about custody of the minor child in all probability the learned Trial Judge will have to interview the minor child. Considering the averments made in the application, in my view, a case is made out for transferring the petition filed by the respondent to Family Court, Pune. However, a time bound schedule will have to be fixed for disposal of the case as the dispute is about custody of a minor child and as the respondent will have to attend the Family Court at Pune though he is a resident of Mumbai.

6. Hence, I pass the following order :-

(a) The Petition No.D-46/2005 pending in the Family Court at Mumbai is hereby transferred to the Family Court at Pune;

(b) Office of the Family Court at Mumbai will forthwith transfer the papers of the said petition to the Family Court at Pune on production of an authenticated copy of this order;

(c) Parties are directed to appear before the learned Principal Judge of Family Court at Pune on 16th April 2007 at 11.00 a.m.. The learned Principal Judge may take up the petition for hearing himself or may transfer it to any other Judge as per his administrative convenience;

(d) The Family Court will endeavour to dispose of the petition as expeditiously as possible and preferably within a period of three months from 16th April 2007;

(e) An assurance given by the petitioner to this Court that he will not seek any adjournment on any unnecessary ground and that he will co-operate with the Family Court for expeditious disposal of the petition is accepted;

(f) Application is allowed in the above terms;

(g) All concerned to act on an ordinary copy of

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this order duly authenticated by Registry of this Court.

(A.S.OKA, J.)